RECOMMENDATIONS WITH COMMENT

1. Enact a definition of premium affordability which assures that auto insurance rates are available to Michigan consumers at fair and reasonable rates.

Comment: This definition of "affordability" ("excessive" under the Insurance Code), is outlined in *Shavers*, where the court required a balancing of the "interests" of consumers, with the "needs" of insurers. The present definition of "reasonable competition among insurers" has no such balance, and defines affordability exclusively from the insurers' point of view. The *Shavers* opinion further requires "fair and reasonable" rates. [Source: *Shavers v. Attorney General*, p. 606]. Chief Justice G. Mennen Williams outlined a four (4) part test for auto No Fault compliance with the constitution. The second prong of the test specifically provides for "[p]remiums reasonable to insured and insurer for the specific insurance coverage . . ." [Source: *Shavers v. Attorney General*, p. 607].

2. Require insurance companies to obtain the Insurance Commissioner's approval, prior to raising their rates.

Comment: Insurers should not be able to grant themselves a pay raise whenever they choose, as they can with the present "file and use" system. Now, companies simply "file" the rate increase they want, and are then able to "use" that filed rate increase, immediately. The Supreme Court implicitly requires prior approval of rates in section III(3) of the *Shavers* opinion states that "every person affected" has the right to examine the factors involved in a proposed rate that "[t]he insurer **may** charge." This contemplates some form of review by consumers and regulators alike, before the rate goes into effect. [Source: *Shavers v. Attorney General*, p. 608].

Recommendation 2 is contingent upon passage of Recommendation 1, as prior approval is of no consequence without a reasonable standard for judging rate affordability.

In the early 1980's, the wave of de-regulation spread to the insurance, banking, securities, and other financial industries. Now, consumers are paying a severe price for those lax policies, from Wall Street to Main Street. It allowed industries like the auto insurance industry, to escape accountability. As a result, prices soared.

An April 2008 in-depth study by the Consumer Federation of America, found that the 15 states which require prior approval of auto insurance rate changes, had the smallest increase in rates. Again, Michigan's 69% increase, during that period of time, was the largest rate of increase in the country.

Furthermore, the study found that prior approval states had a similar level of competition, with only slightly lower company profits, compared to states with other regulatory regimes. [Source: The entire study is available for examination at www.consumerfed.org/pdfs/state_auto_insurance_report.pdf.].

3. Give consumers who have purchased collision insurance, the right to recover actual repair costs to the vehicle, from the at-fault party in an accident.

Comment: This would involve amending Section 3135(3)(e), to eliminate the $500 ("Mini Tort") cap on liability for damage to motor vehicles, allowing consumers to sue the at-fault party for collision damage, regardless of the amount of damage. Michigan is the only state which imposes a No Fault process for collision recovery. While collision coverage is not required under No Fault, collision insurance **is often required by lenders** who are financing the vehicle, so that they can protect their investment until the debt service is fully paid.

Potential savings to the consumer could be up to 40% of the annual premium. This would have no impact on those who are not financing their vehicle. They may elect to purchase this type of policy from their insurer.

First party collision coverage is always "no-fault" in that it covers a driver's vehicle whether or not one are at-fault in a collision. The difference between Michigan and the rest of the country is that Michiganians (or our companies on our behalf) cannot sue the at-fault driver, so there is no opportunity for reimbursement from the policyholder's property damage liability insurance.

Of the 50 states, including the 11 other No Fault states, Michigan is the only state which has this type of restriction.

When No Fault was originally adopted, it was widely recognized that this restriction would be problematic:

New insurance plan starts Oct. 1

No-fault nears for state's 5 million drivers

> "Probably the least desirable feature of the no-fault plan, the one expected to cause the most resentment among drivers – is the collision coverage. Today, if another driver rams your car and he's to blame, he or his insurer pays for damages. Under no-fault, each driver will have to pay for damage done to his car by another unless he carries collision insurance. Even then, if his collision protection has a deductible feature, he will have to pay the amount of the deductible."
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> [Source: The Detroit News, August 27, 1973, p. A-8].

4. Strengthen the Insurance Commissioner's authority to award refunds to consumers, upon a finding that a company has overcharged policyholders.

Comment: Section 2430 of the Insurance Code currently allows the Insurance Commissioner to order refunds. However, it is of no practical effect. Insurers get around this provision by using a loophole to file their rates under a different provision of the Code, where the Insurance Commissioner's refund authority does not apply. Closing this loophole would require an amendment to section 2114 of the Code.

Florida insurance law, for example, requires the insurance regulator to order, for any "use and file" auto rate change to be excessive, that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified, be returned to the policyholder, in the form of a credit or refund.

5. Prohibit the practice of "Data Mining," where insurers' sell policyholders' personal information to third parties or marketing partners, often without the policyholder's knowledge or consent.

Comment: The Gramm-Leach-Bliley federal privacy Act sets some standards for the disclosure of a policyholder's personal information. And Chapter 5 of the state Insurance Code (MCL 500.501): "Privacy of Financial Information," addresses the unauthorized disclosure of certain financial information to third parties.

However, insurance companies continue to collect and sell a variety of policyholders' personal information.

Furthermore, confusing or obscure language in many insurance policies allow insurers to engage in this exploitative practice. Very often, companies will bury in the fine print of the policy, language placing an affirmative obligation on the policyholder, requiring him or her to notify the company – in writing – within a short period of time, of any objections to the company's sale of the information. Because of the way policies are written, this obligation may escape the consumers' attention altogether. And the consumer's rights under state and federal law are unknowingly waived.

In 2004 the State of California passed the broadest financial privacy law in the nation, which required insurance companies to give customers a chance to object before a company can share private information with their affiliates or "Marketing Partners," and information that does not involve a customer's fitness for credit, insurance, or employment. That law, which was challenged in court, was recently upheld by the United States Court of Appeals for the Ninth Circuit.

This recommendation is, by far, the most widely demanded by consumers who responded, throughout the year, to the Advocate's website and further reflected in responses to the Audience Polls taken at the 4 Auto Insurance Affordability Hearings.

6. Close the loopholes which allow insurers to use subjective criteria such as credit scores, occupation, and level of education by:

(a) Requiring that rates be based on the objective criteria in the Insurance Code such as miles driven, type of vehicle, and driving record, and

(b) Designating the use of a drivers' credit score, occupation, and level of education, as an Unfair Trade Practice under the Insurance Code.

Comment: The loophole in Chapter 2110a of the Code, which passed in 1996, allows companies to use subjective rating factors like credit scoring, and circumvent the objective rating factors – consumer safeguards - in Chapter 2111 of the Code.

For example, when the State of Massachusetts moved to a managed competition system for auto insurance rates in mid-2008, they issued regulations which prohibit rating on the basis of sex, marital status, race, creed, national origin, religion, occupation, income, education, homeownership, credit information or age.

Insurers should be required to seek the Legislature's prior approval for proposed "discounts" outside the ambit of the objective standards in the Insurance Code.

The policy objective here is to base rating decisions on objective, non-discriminatory criteria, which relate to the manner in which a driver operates the vehicle. The companies' use of credit scoring rising to the level of an Unfair Trade Practice, was raised by the state's expert witness at the Auto Insurance Affordability Hearing held in Detroit. Companies' different treatment of policyholders based upon subjective rating classifications may also violate the state and federal constitutions' 14th Amendment, Equal Protection clauses.

In April 2007, the Office of Insurance Regulation for the State of Florida, issued a report analyzing the insurance industry's use of education and occupation in the underwriting and rating of auto insurance policies. The report found that these practices are discriminatory, and are in reality a proxy for income. [Source: The full report is available at http:/www.floir.com/pdf/OCCRateRpt.pdf.].

Recommendation 6(b), above, would involve an amendment to Chapter 20, sections 2047(1), and 2027(C) of the Insurance Code.

7. Consider the option of offering a "Low Cost Auto Insurance Policy," on a pilot basis, while continuing to provide full health care benefits to consumers.

Comment: The policy objective here is to encourage people to be insured. There are a significant number of uninsured drivers in Michigan: approximately 20% state-wide, and an estimated 55% or more in the state's urban areas. Such a low cost policy ("California Low Cost Automobile Insurance Program") is now offered to California drivers who qualify, for $400. The program is run through the California Placement Facility. California has a mandatory insurance requirement for liability, with limits of $15,000 (for a person hurt or killed in an accident), $30,000 (for each accident if several people are hurt or killed), and $5,000 (for property damage in another state). Michigan's limits are $20,000, $40,000, and $10,000.

California's low cost policy law (S.B. 171), went into effect, on a pilot basis, in Los Angeles and San Francisco, in 1999. It is now available throughout the entire state. The low cost policy has residual bodily injury ("RBI") limits of $10,000, $20,000, and $3,000. The assumption is that the working poor have fewer assets to protect, or are wholly "uncollectible" if they are sued. And therefore, the lower limits are justified. If these limits are too low, underinsured insurance can be purchased. There are strict limits on who qualifies, such as low income and a good driving record. Without such coverage the at-fault, uninsured driver in an accident, gets off without economic consequence. This allows for at least some coverage.

8. Prohibit Insurance Commissioners from working for insurance companies for a period of at least 2 years after leaving office.

Comment: The principal policy objective here is to have an independent Commissioner who will faithfully and fairly balance the rights of consumers and companies. The following is a list of all those individuals having served as the Commissioner of Insurance for the State of Michigan, through Democratic and Republican administrations, since No Fault was adopted in 1973:

<u>Michigan Insurance Commissioners</u>:

Kenneth L. Ross	2007-Present
Linda A. Watters	2003-2007
Frank M. Fitzgerald	1999-2003
E. L. Cox	1998-1998
D. Joseph Olsen	1995-1997
David Dykhouse	1991-1995
Herman W. Coleman	1985-1988
Nancy A. Baerwaldt	1980-1985
Richard A. Hemmings	1979-1979
Thomas C. Jones	1975-1978
Daniel J. Demlow	1973-1975
Russell E. Van Hooser	1969-1973

7 of the 11 former Commissioners, worked for the insurance industry upon leaving office. It is vital that potential employment prospects, after Commissioners' leave office, do not cloud their judgment while in office.

The States of Alabama, Arizona, California, Massachusetts, South Carolina, and Washington, all have laws which restrict the types of employment relationships that former government officials, including insurance regulators, may have during the first year or two, after they leave office. In August of 2008, 14 consumer groups filed a complaint with the National Association of Insurance Commissioners ("NAIC"), expressing dismay at the "revolving door" between Insurance Commissioners and the insurance industry. In pertinent part, the complaint stated: "[T]he movement of regulators to industry feeds the perception that NAIC leadership positions are a stepping-stone to future industry employment." [Source: August 2008 letter to NAIC]

9. Enact tougher penalties for companies who raise a policyholder's rates, or cancel a policyholder's policy, after a claim is submitted, when the policyholder is not at-fault. Routine "Market Conduct Examinations" should be initiated to determine industry compliance with this policy. Furthermore, there should be education to inform consumers that this practice is illegal.

<u>Comment</u>: When a company raises a not-at-fault policyholder's rates for submitting a claim, the consumer is actually penalized for using the product he or she has already paid

for. Moreover, this practice creates a powerful disincentive for policyholders to file legitimate claims. The policyholder may well do a cost-benefit analysis, and decide to pay for the repair cost of, e.g. replacing a cracked windshield, out of his or her own pocket, rather than calling the company, paying the deductible, and taking the risk that his or her rates will go up on the next 6 month bill. When this happens, the company earns a windfall profit.

10. Give consumers reasonable oversight authority over company rating practices by:

(a) Requiring companies to prominently publish proposed rate increases on OFIR's website, describing the amount of the proposed increase, in plainly-worded language, understandable to the average consumer, and

(b) Allowing consumers to challenge proposed rate increases, before they go into effect.

Comment: There cannot be responsible oversight if the public and the regulators cannot decipher the nature and meaning of the information (rate increases) being presented. Rate filings in Michigan are difficult to obtain, and once obtained are virtually incomprehensible unless one is very highly skilled. This is a direct violation of the *Shavers* case, which specifically stated, "Individuals must have the knowledge necessary to protect themselves against erroneous . . . underwriting and rate-making decisions." The High Court further ruled that rate-making information must be "[p]ublicized in such a manner that ***every person affected*** can readily ascertain the factors and amounts of differentials applicable to him and calculate the premium the insurer may charge." [Source: *Shavers v. Attorney General*, p. 608].

The State of Florida addressed this issue by enacting a "Transparency in Rate Regulation" statute which requires the insurance regulator to provide a website for public access to rate filing information, which includes the overall rate change requested by the insurer, all recommendations made by the regulatory staff having reviewed the filing, and the overall rate change approved by the regulator.